

EXHIBIT 2  
DATE 2-2-09  
HB 310

EXHIBIT 5  
DATE 3-26-07  
SB 368

March 26, 2007

Dear Representatives serving on the Human Services Committee,

My name is Barbara Gutschenritter, MD. I am a cancer specialist. I have been practicing medicine for 25 years, for 20 years here in Montana. I have hospital privileges on 5 medical staffs. I am here today to voice my vehement opposition to SB 368. I certainly would have been here to testify before the Senate, had I known about this bill.

I understand that, from the perspective of the public and the Senate, one would assume that this bill serves the purpose of providing hospital oversight of its medical staff or for a medical group to provide oversight of the physicians in their group.

I am here today to let you know how the process of "Peer Review" can be abused and manipulated. It can be used to target and attempt to destroy a physician who has made no error in patient care, but who has, for some reason, fallen out of favor with the hospital or medical group. Such an attack against a physician and the initiation of "sham" peer review may occur for a number of reasons, e.g.: the physician may be seen as an economic competitor; the physician may have raised patient care concerns that make the hospital or physician colleagues uncomfortable; the physician may have raised concern about another physician's lack of credentials in performing a certain procedure; the physician may have declined to participate in another physician's sham peer review process.

This is retaliation disguised to look like peer review. How can this happen? It's easy. Ask the Horthy Springer law firm of Pittsburgh, PA. There is a well-formulated template:

-- Hospital administrators typically are able to find a few physicians they can count on. Often the etiology of that loyalty is money. Perhaps the physician is offered \$50K, perhaps \$100K, perhaps \$150K to head one of the hospital departments. Perhaps the administration surreptitiously contributes to a physician's medical group by paying a hefty salary. Perhaps it's a lavish trip. Unfortunately, physician loyalty can be bought and can be manipulated.

-- Once you have a few in the core group, the next step is to start the rumor mill about the targeted physician. Assemble a list of ALLEGED wrongdoings on the part of the physician, no matter how trivial, no matter how invalid. Try to make it a huge list; try to overwhelm the physician.

-- Start a paper trail. Start hauling the doc in to "peer review" meetings, which can be scheduled with a 24 hour notice, to discuss "concerns" with no notice of what the issues are. If, for example, a secretary complains that a physician makes too many corrections on consultation reports, that complaint is not specified to the physician. It may be couched as a vague complaint that the physician is creating a hostile work environment, in order to "protect confidentiality". No one is allowed to accompany the physician to a peer review meeting, no legal representation, no taping of any such meeting. And this is

carried out with the warning that the mention of anything about this meeting to any hospital employee, any colleague, or any board member by the physician is grounds for immediate dismissal.

--Perpetuate a rumor mail. Start telling other physicians, board members, etc ANYTHING about this doctor. Make it up...the individual was raised in an abusive family environment, that he/she, has a long history of mental illness or perhaps a history of some weird sexual addiction. It doesn't matter. This is all under the guise of "peer review", which is shrouded by confidentiality.

--Find some reason to send the doctor off for a psychiatric evaluation (at his or her expense). If it comes back clean, find a different evaluator and try again. Arrange for the evaluator to visit with hand picked witnesses to the physician's behavior. If the evaluation finds the hospital to be dysfunctional, bury the report.

--If doc resigns or is "fired" (privileges revoked), attempt to block him/ her from working elsewhere. Try to ruin him/her financially so that the doctor is unable to fund a legal challenge

I have seen too many physician colleagues who smeared by this sham peer review process. This is a travesty. This is Kafka-esque. The medical profession is the only one in which a physician may be fired and have absolutely no recourse, because of the veil of immunity or "confidentiality". A doctor targeted by this process has no means to clear his or her name. Only with the initiation of a law suit does the physician even get to see, through discovery, the specific allegations. This bill does not allow the physician to EVER learn of the specifics of any complaints. This bill takes away the physician's only recourse which is in the courts of the state.

Moreover, the valid patient care concerns frequently at the heart of this type of retaliation never come to light. This should be frightening to all of us.

I urge you representatives to look behind this bill, to the intent behind it. While PURPORTING to facilitate Peer Review within a hospital or a medical group, what this legislation does is make it easier for a hospital or a medical group to fire physicians who have differing views.

I urge you to all to protect your constituencies from bad doctors. I urge you to vote against this bill.

Sincerely,

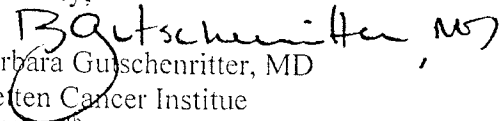
  
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EXHIBIT 3  
DATE 3-26-07  
FILE # 368

Serving Northwest Montana

# DAILY INTER LAKE

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## Suit alleges ER misdeeds

Posted: Sunday, Feb 25, 2007 - 12:34:39 am MST

By CANDACE CHASE

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Dr. Scott Rundle is shown in June 2006 outside the emergency room at Kalispell Regional Medical Center. Rundle has filed a multimillion-dollar lawsuit against Silvertip Emergency Physicians, the company that provides doctors for the emergency room. Karen Nichols file photo/Daily Inter Lake

### The Daily Inter Lake

A former emergency-room doctor filed a lawsuit Tuesday that alleges defamation, civil conspiracy, wrongful discharge and other illegal acts by Silvertip Emergency Physicians, the company that provides emergency-room care at Kalispell Regional Medical Center.

Dr. Scott Rundle filed the legal action, which includes allegations that Silvertip's physicians covered up another physician's alcohol abuse, ignored Rundle's concerns over patient-care quality and made referrals more for financial gain than for patient care.

Rundle requests more than \$16 million in compensation.

Silvertip Emergency Physicians, which contracts to provide physicians in the KRMCC emergency room, did not answer the Inter Lake's requests for a response. (See related story for comments from Kalispell Regional Medical Center.)

Rundle, 39, was a member of Silvertip until October. He became celebrated

in the Flathead as the emergency-room physician who refused to give up on reviving 3-year-old drowning victim Jacob Felghtner in 2004. The boy recovered after two hours of clinical death.

Rundle also served as medical director of Kalispell Fire and Ambulance Service, Flathead County EMS Service, Marion Ambulance Service and Flathead Valley Community College's paramedical program.

In the lawsuit, Rundle alleges Silvertip physicians defamed his character, reputation and clinical competence. He said he was "coerced into providing Silvertip with his resignation" on Oct. 12, 2006. He maintains their motive was retaliation for the concerns he raised over patient care and his refusal to go along when another physician was targeted and pushed out of the group.

The suit names Dr. Keith Lara, director of the corporation, and eight other unnamed members of Silvertip.

Kalispell Regional Medical Center was not named as a party to the lawsuit.

According to the lawsuit, Silvertip members allegedly falsely accused Rundle of using illegal drugs, writing illegal prescriptions and refusing to answer pages while on duty.

The physician also said in the suit that Silvertip physicians made false allegations that he sexually harassed nurses and other staff and that he had contracted and then transmitted herpes to at least two medical center employees.

He claimed in the court filing that he was the victim of false allegations that he had engaged in inappropriate sexual behavior with another member of the staff while on duty at Kalispell Regional Medical Center.

The suit charges that all the rumors and allegations were false and that the Silvertip defendants knew they were lies.

"These allegations have, as designed, spread not only throughout the KRMC medical community, but to the entire medical community in Western Montana," the suit says.

Rundle was hired by Silvertip in July 2000. According to the lawsuit documents, he and other Silvertip physicians each earned about \$300,000 in 2005, compared to other emergency-room doctors within a 120-mile radius earning from \$90,000 to \$150,000.

According to the suit, Kalispell Regional Medical Center pays Silvertip 70 percent of the gross dollars billed for services rendered by the group's emergency-room doctors.

Since leaving Silvertip, Rundle has worked part time, earning about \$90,000 per year, as an emergency room physician in the Flathead Valley and Poison area.

Attorney Scott Hilderman of Johnson, Berg, McEvoy & Bostock of Kalispell represents Rundle and filed the lawsuit in Flathead County District Court. Hilderman would not comment except to say that he has specific facts and evidence to back up every allegation in the suit.

The lawsuit states that Rundle first noticed substantial changes in his treatment after he voiced numerous concerns about the quality of patient care provided by Silvertip.

These concerns included the removal of an emergency-room physician from Silvertip for "inappropriate and personal reasons" including that his personal appearance, which included a beard, was not up to par.

According to Rundle, the doctor, who isn't named to protect his privacy, was forced out in 2003 after unsubstantiated allegations that he used marijuana and had "an adverse trend" in his clinical care.

The lawsuit claims that the Silvertip physicians were led to believe that Velinda Stevens, the medical center's chief executive officer, wanted the physician removed from the group for "substandard patient care or disruptive behavior."

Rundle said this ER doctor was nearly always the highest-ranked Silvertip physician based on patient surveys. Because he didn't believe the allegations, Rundle asked to make an independent review of the doctor's patient charts.

"Rundle was warned by several group members that this was a bad idea and that he should go along with the vote to terminate Doctor's status with Silvertip to 'protect himself,'" the suit says.

In spite of the warnings, Rundle reviewed the charts of 17 patient cases in question and concluded the allegations of substandard care had no merit.

He then presented his findings to other members of Silvertip, but said all the members of the group refused to review the findings. Some expressed anger at Rundle for investigating the charges.

At that meeting, he was told that Stevens still wanted the physician removed and that he could call her himself. Rundle did call her and allegedly was told that the medical center had no concerns about the physician's work, but the other Silvertip members allegedly refused to believe him.

At a subsequent meeting, Rundle voted to retain the doctor but others voted to remove him, saying that he was "a bad and dangerous doctor." But the group allowed him to work for four more months so other physicians didn't have to work additional shifts.

Rundle also claims he raised concerns that doctors at Kalispell Regional Medical Center were pressured to admit patients into HealthCenter Northwest rather than the nonprofit medical center when it wasn't in the patients' best interests.

Rundle said in the filing that the health center (which is licensed as a private hospital) "does not provide the same level of care for patients as KRMC." However, the Silvertip physicians, as investors in HealthCenter Northwest, receive quarterly payments from net receipts.

In another potentially damaging allegation, Rundle claims in the lawsuit that Silvertip had retained a physician with a drinking problem.

"While on duty for KRMC, this emergency room physician overdosed on alcohol and was admitted into the emergency room as a patient and placed on a mechanical ventilator for two days."

Rundle claims that the incident was ordered "covered up" by Silvertip members. He said he was warned not to speak about the episode.

In the lawsuit, Rundle alleges that Silvertip members misused their peer review process to cover up malpractice by its physician as well as to attack other physicians for personal reasons.

The dispute involving Rundle came to a head at an Oct. 11 meeting of all Silvertip members. According to the lawsuit, Stevens, the medical center CEO, appeared at the beginning of the mediation and requested that Silvertip move beyond the dispute and recommended that Lara resign his position as director of Silvertip. Stevens then left the room.

After that, the lawsuit says, Lara restated the accusations about drug use, illegal prescriptions, refusal to answer pages and inappropriate sexual conduct.

"Defendants also falsely accused Rundle of an inappropriate relationship with a female firefighter while serving as (medical) director of Kalispell Fire and

Ambulance Service," the suit said.


The suit reports that Lara then said that Rundle had put the group's contract with the medical center in jeopardy and that Rundle had put the group at risk for a sexual harassment claim.


Rundle claims he was then given a choice of getting fired, resigning or going into rehab. When he asked rehab for what, he said none of the members would give him a specific problem.

The lawsuit's specific charges against the Silvertip group include defamation, intentional infliction of emotional stress, civil conspiracy, wrongful discharge and breach of contract.

Rundle requests direct damages of \$5.4 million, \$800,000 for wrongful discharge, consequential damages "in an amount to be proven at trial," and punitive damages of \$10 million.

Reporter Candace Chase may be reached at 758-4436 or by e-mail at [cchase@dailyinterlake.com](mailto:cchase@dailyinterlake.com)

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The Daily Inter Lake  
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Testimony of Attorney Norman Newhall in Opposition to SB368 3-26-2007

I am an attorney actively engaged in trial practice for more than 35 years in Great Falls, Montana. I submit the following testimony in opposition to Senate Bill 368 which seeks to expand the provisions of Sections 50-16-201 MCA et seq. Sections 50-16-201 et seq. provide that information gathered by healthcare facilities under the auspices of quality control is confidential and privileged. Superficially, these laws appear to permit healthcare facilities to gather information with respect to medical practitioners without fear that the information will be used against the healthcare facility at a later date. As a practical matter, the laws protect careless healthcare facilities by permitting them to hide the fact that they have conducted little or no investigation at all.

At §37-3-101 MCA, the Montana legislature has previously recognized that in licensing physicians, it is the public policy of the state to protect the public from "unprofessional, improper, unauthorized, and unqualified practice of medicine . . ." In conformance with this public policy, the Montana Supreme Court has likewise recognized the common law duty of hospitals and other healthcare entities involved in credentialing and/or granting privileges to physicians to "use reasonable care to employ only competent physicians and nurses". *Maki v. Murray Hospital* (1932) 91 Mont. 251, 7 P.2d 228. Persons who place themselves in the hands of such physicians "have a right to rely upon the performance of such duty . . ." *Id.* at 233. Similarly, one who employs a physician has the duty to "use reasonable care in selecting a reasonably skilled physician". *Vesel v. Jardine Mining Company* (1939) 110 Mont. 82, 100 P.2d 75, 80.

I speak from experience in noting that the practical effect of Sections 50-16-201 et seq., and of any expansion of such sections as is proposed under SB368, is to hide from the public the fact that a healthcare facility involved in credentialing, hiring or granting privileges to a physician has conducted little or no investigation into the physician's background before turning the physician loose on unsuspecting patients.

Dr. Thomas Stephenson graduated from medical school in 1962. Until he came to Montana in 1995, he was engaged in a highly specialized practice of cosmetic surgery in Southern California. In 1991, Stephenson was profiled by the Los Angeles Times as a celebrity plastic surgeon "whose breast implant ads featuring bosomy women in negligees run frequently in the Times." During his practice in California, Stephenson was the subject of an investigation by the Federal Drug Enforcement Administration which reported that Stephenson was "a Demerol addict and was known to steal Demerol to satisfy his habit" and also reported that Stephenson had been convicted of drunk driving. Further, during the 1980s, Stephenson was the subject of an accusation by a patient to the California Medical Board alleging malpractice and that Stephenson had rendered treatment while under the influence of Demerol and alcohol. The accusation was withdrawn only after Stephenson agreed to complete the medical board's Diversion Program.

Stephenson's notoriety increased even more when he began to be regularly sued for malpractice. Stephenson was the defendant in 11 separate claims from 1986 to 1993. The California Board of Medical Examiners examined only four of the claims and found Stephenson to have committed gross negligence, repeated acts of negligence and incompetence in the practice of medicine, and to have engaged in acts involving dishonesty and corruption. Following further proceedings, the California Board added an additional finding that Stephenson had knowingly filed fraudulent insurance billings. Stephenson's California license was revoked, the revocation was stayed and his license was placed "on probation for a period of ten years" under numerous terms and conditions, all of which was effective on April 11, 1994.

Stephenson also had a Florida license. In 1995, Stephenson was charged by the Florida Board with failing to timely report the action of the California Board. The Florida Board found the allegations to be true and Stephenson's Florida license was suspended and placed on probation.

In 1995, Stephenson, without an active medical license, applied to practice medicine in Montana. The Montana Board granted a temporary license while it investigated Stephenson's application for a permanent license. While Stephenson was practicing under the temporary license, Stephenson was hired as a family practitioner by Triangle Healthcare, a Montana medical clinic, and was granted hospital privileges by Liberty County Hospital.

In November 1999, Stephenson, while practicing with Triangle Healthcare, saw my client, Jack Nelson. Stephenson diagnosed a possible aortic aneurysm, a potentially emergent and life threatening condition. The most basic standard of care required that threat of rupture of the aneurysm be immediately measured by an ultrasound exam costing approximately \$40 and which can be conducted in less than five minutes. The ultrasound machine is portable and was immediately available in the same building on the day of the physical exam. Had the procedure been performed, Stephenson would have discovered an urgent condition which was readily repairable, but which required immediate surgical repair prior to rupture.

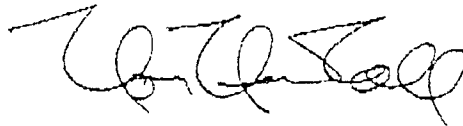
Unfortunately, Stephenson was not even aware of the appropriate diagnostic procedure and dismissed Jack Nelson with a vague instruction to come back the following week for an x-ray. That Stephenson even suggested an x-ray is an indication of just how out of touch Stephenson was with modern practice. Several days later, Jack Nelson died an agonizing, prolonged death when his aneurysm ruptured at home.

Two months after Jack Nelson's death, Stephenson "retired" and, unknown to Jack Nelson's widow, cancelled his claims made malpractice insurance before the widow had discovered Stephenson's negligence.

Through this office, the widow brought a claim against Triangle Healthcare and Liberty County Hospital for negligence in investigating and credentialing Stephenson before hiring him and granting hospital privileges. Since Triangle Healthcare and Liberty County Hospital had the duty under Montana law to exercise ordinary care in the hiring, credentialing and privileging of physicians, Jack Nelson's widow logically sought to discover precisely what Triangle Healthcare and Liberty County Hospital had done to investigate Stephenson prior to hiring and privileging him. A copy of discovery submitted to Triangle Healthcare and Liberty County Hospital is attached to this testimony. Under the provisions of Sections 50-16-201 et seq., both Triangle Healthcare and Liberty County Hospital "stonewalled" Mrs. Nelson's legitimate inquiry thereby posturing as if they had done something to investigate Stephenson, when in fact they had done little or nothing. Subsequent discovery, by means of deposition, disclosed that the person acting as the medical director for Triangle Healthcare and Liberty County Hospital met Dr. Stephenson for lunch on one occasion and the next meeting was at a cocktail reception after Stephenson had already been hired and privileged.

The practical effect of Sections 50-16-201 et seq. is to permit irresponsible healthcare facilities to hide their failure to conduct proper investigation and review. Responsible healthcare providers who properly investigate and credential physicians before permitting them to practice medicine do not need the protections of Sections 50-16-201 et seq. Instead the secrecy encouraged by Sections 50-16-201 et seq. permits the few irresponsible medical providers (the "bad apples") to hide the fact that they have failed to fulfill their legal duty and subverts the public policy previously enunciated by the legislature in §37-3-101 to protect the public from "unprofessional, improper, unauthorized, and unqualified practice of medicine . . ."

SB368 seeks to expand the provisions of Sections 50-16-201 et seq. Under the guise of creating "quality control guidelines" SB 368 actually permits even more medical providers to do nothing to investigate incompetence and then hide such fact from persons who have been injured by incompetent physicians whom they failed to investigate before hiring. The unfortunate, albeit unintended, consequences of Sections 50-16-201 et seq. should not be expanded. I therefore respectfully urge this committee to oppose SB368.



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Attorneys for Defendants Liberty County and  
Liberty County Hospital and Nursing Home, Inc.

MONTANA TWELFTH JUDICIAL DISTRICT COURT, LIBERTY COUNTY

DORIS NELSON, Individually, and as  
Personal Representative of the Estate of Emil  
J. (Jack) Nelson,

Plaintiff,

-vs-

STATE OF MONTANA; LIBERTY COUNTY, a  
Political Subdivision of the State of Montana;  
LIBERTY COUNTY HOSPITAL AND  
NURSING HOME, INC., a Montana  
corporation; THOMAS R. STEPHENSON,  
M.D.; RICHARD S. BUKER, JR., M.D.;  
TRIANGLE HEALTH CARE; TRIANGLE  
HEALTHCARE PLLP; JOHN DOES I-IV,

Defendants.

CAUSE NO. DV-03-3237

DEFENDANTS LIBERTY COUNTY  
AND LIBERTY COUNTY  
HOSPITAL AND NURSING HOME,  
INC.'S RESPONSES TO  
PLAINTIFF'S FIRST DISCOVERY  
REQUESTS (INCLUDING  
REQUESTS FOR ADMISSIONS)

Defendants Liberty County and Liberty County Hospital and Nursing Home, Inc.  
provide the following responses to Plaintiff's First Discovery Requests to Liberty County  
and Liberty County Hospital and Nursing Home, Inc.:

**GENERAL OBJECTION**

These Defendants object to the instructions and definitions to the extent that the  
preliminary statements in the Plaintiff's First Discovery Requests exceeds the obligation to

respond to discovery as set forth by the Montana Rules of Civil Procedure.

**DISCOVERY REQUEST NO. 2001:** Produce your complete file and all documents relating to the application of Thomas R. Stephenson for hospital privileges or to be a member of your medical staff at Chester, Montana.

**RESPONSE:** Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

To the extent that this request is not for "data" as defined by MCA § 50-16-201 and is not privileged or confidential as provided by the above-referenced statutes, responsive documents are attached as **Exhibit A**.

**DISCOVERY REQUEST NO. 2002:** Produce your complete file and all documents relating, directly or indirectly, to the grant of hospital privileges to Thomas R. Stephenson or the admission of Thomas R. Stephenson as a member of your medical staff.

**RESPONSE:** Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

**DISCOVERY REQUEST NO. 2003:** Produce your complete file and all documents relating, directly or indirectly, to the efforts of you, or of persons working on your behalf, to credential, investigate or to otherwise determine the qualifications of Thomas R. Stephenson to be granted hospital privileges or to be a member of your medical staff.

**RESPONSE:** Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

**DISCOVERY REQUEST NO. 2004:** Produce your complete file and all documents relating, directly or indirectly, to the termination of Thomas R. Stephenson's hospital privileges or of his permission to serve as a member of your medical staff.

**RESPONSE:** Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

Without waiving this objection, the termination of Dr. Thomas R. Stephenson's hospital privileges and/or his permission to serve as a member of the medical staff was the result of Dr. Stephenson relocating to another community.

having responsibility for overseeing the practice of medicine in California for information regarding Dr. Stephenson's practice of medicine in California.

RESPONSE: Admit with the qualification that inquiry was indirectly made by making a request from the National Practitioner Data Bank.

DISCOVERY REQUEST NO. 2008: Admit that you did not make inquiry of, or request information from, the National Practitioner Data Bank for information regarding Dr. Stephenson.

RESPONSE: Deny.

DISCOVERY REQUEST NO. 2009: Admit that you did not make inquiry of, or request information from, the Federation of State Medical Boards for information regarding Dr. Stephenson.

RESPONSE: Admit with the qualification that the Federation of State Medical Boards may have provided information to the National Practitioner Data Bank and a request was made of the National Practitioner Data Bank for information regarding Dr. Stephenson.

DISCOVERY REQUEST NO. 2010: Admit that you did not make inquiry of, or request information from, any person, governmental agency or other entity outside of the State of Montana relating to the practice of medicine by Dr. Stephenson in California.

RESPONSE: Deny.

DISCOVERY REQUEST NO. 2011: Identify all persons named as references by Dr. Stephenson prior to the grant of hospital privileges to Thomas R. Stephenson or to permission to serve as a member of your medical staff.

RESPONSE: Objection on the grounds and for the reasons that this discovery

request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

**DISCOVERY REQUEST NO. 2012:** Admit that you did not make inquiry of, or request information from, any reference identified by Stephenson.

**RESPONSE:** Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

**DISCOVERY REQUEST NO. 2013:** If your response to Discovery Request 2006 through 2010, and Discovery Request 2012, or to any of them is a denial, or is anything other than an unqualified admission:

- a. Identify each person, department or agency to whom inquiry or requests for information was made;
- b. State the date or dates of each inquiry or request;
- c. State whether the inquiry or request was written or oral;
- d. Identify the person making the inquiry or request; and
- e. Produce all documents evidencing such inquiry or request and all responses to

any inquiry or request.

**RESPONSE:**

- a. National Practitioner Data Bank;
- b. Request processed 07/15/97;
- c. Unknown;
- d. Request would have been made under the auspices of Rich Moog, CFO, who is licensed to access the data bank, but may have been requested by Glenda Hansen of the Liberty County Hospital Business Office.
- e. Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201. Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

**DISCOVERY REQUEST NO. 2014:** Admit that the documents annexed hereto as Appendix H (and Bates stamped 1-13 and 185-216) are true and correct copies of Emil J. (Jack) Nelson's medical records which records are in your files.

**RESPONSE:** Admit.

**DISCOVERY REQUEST NO. 2015:** Other than the documents annexed as Appendix H, produce true and correct copies of any and all medical records, correspondence, and any other documents relating to the care or treatment of Emil J. (Jack) Nelson.

**RESPONSE:** Except for the attached records, Exhibit B, and the medical records contained in the Medical Legal Panel records, these Defendants are unaware of any other medical records, correspondence or other documents relating to the care or treatment of Emil J. (Jack) Nelson.

**DISCOVERY REQUEST NO. 2016:** Produce all documents showing, or tending to

show (either expressly or implicitly) that an insurance company was made aware, at any time, of a possible claim for professional negligence arising from care of Emil J. (Jack) Nelson provided by Thomas R. Stephenson, M.D.

**RESPONSE:** Objection on the grounds that said request is irrelevant and not calculated to lead to relevant evidence. Without waiving this objection, please see attached documents, **Exhibit C**.

**DISCOVERY REQUEST NO. 2017:** Produce any and all other documents not hereinabove produced and relating to the matters described in the Complaint.

**RESPONSE:** Objection is entered on the grounds and for the reasons that said request is vague, ambiguous and overbroad to provide a response.

**DISCOVERY REQUEST NO. 2018:** Produce all minutes of meetings relating, directly or indirectly, to the grant of hospital privileges to Thomas R. Stephenson or to serve as a member of your medical staff.

**RESPONSE:** Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

To the extent that minutes are not subject to the basis for the objection, those minutes are attached as **Exhibit D**.

**DISCOVERY REQUEST NO. 2019:** Identify each administrator of the hospital from

**RESPONSE:** Articles of Incorporation were filed on December 12, 1997, and approved on January 6, 1998 with Douglas A. Faus and Richard P. Moog as Incorporators.

**DISCOVERY REQUEST NO. 2028:** State the date any predecessor hospital to Liberty County Hospital and Nursing Home, Inc., was formed; the date, if different, that it first conducted business; and the identity of the person or persons who formed it.

**RESPONSE:** Liberty County Hospital and Nursing Home was originally formed as a charitable hospital by Liberty County which began operating in 1953 and was authorized by Liberty County Commissioners at that time. See attached news articles, **Exhibit G**.

**DISCOVERY REQUEST NO. 2029:** Produce true and correct copies of performance reviews or evaluations of Thomas R. Stephenson while he was practicing in Chester, Montana, with privileges at your hospital or while he was a member of your medical staff.

**RESPONSE:** Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

Objection is also entered on the grounds and for the reasons that Dr. Thomas R. Stephenson has a legitimate privacy interest in and he has not provided a consent to the release of any documents responsive to this request.

**DISCOVERY REQUEST NO. 2030:** Produce all documents submitted to the State of Montana by you (or by members of your medical or administrative staff) relating, directly or indirectly, to any evaluation, assessment or review of Dr. Stephenson's performance.

**RESPONSE:** Objection on the grounds and for the reasons that this discovery request seeks information and documents that are privileged and non-discoverable pursuant to MCA § 50-16-203, MCA § 50-16-205 and MCA § 37-2-201.

DATED this 12<sup>th</sup> day of March, 2004.

Walter Busch  
Walter Busch

STATE OF MONTANA     )  
          Liberty         ): ss  
County of Gauche     )

On this 12<sup>th</sup> day of March, 2004, before me, the undersigned, a notary public for the State of Montana, personally appeared Walter Busch, known to me to be the CEO of Liberty County and Nursing Home, the corporation that executed the within and foregoing instrument and acknowledged to me that such corporation executed the same.

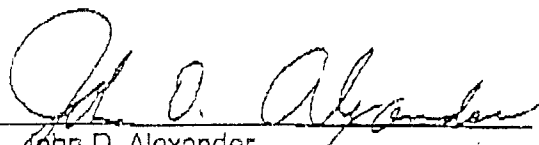
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first hereinabove written.



Marsha A. Stokes  
Notary Public for the State of Montana  
Residing at Great Falls, Montana  
My commission expires: 5/23/2006

DATED this 10 day of March, 2004.

UGRIN, ALEXANDER, ZADICK & HIGGINS, P.C.

By:   
John D. Alexander  
#2 Railroad Square, Suite B  
P.O. Box 1746  
Great Falls, Montana 59403  
Attorneys for Defendants Liberty County and  
Liberty County Hospital and Nursing Home, Inc.

#### CERTIFICATE OF MAILING

I hereby certify that the foregoing was duly served upon the respective attorneys for each of the parties entitled to service by depositing a copy in the United States mails at Great Falls, Montana, enclosed in a sealed envelope with first class postage prepaid thereon and addressed as follows:

Mr. Norman L. Newhall  
LINELL, NEWHALL, MARTIN & SCHULKE, P.C.  
P.O. Box 2629  
300 4th St. No.  
Great Falls, MT 59403-2629

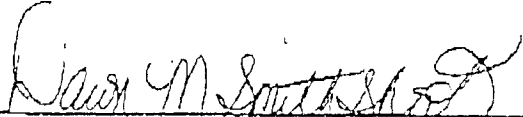
Gregory A. Van Horssen  
Keller, Reynolds, Drake,  
Johnson & Gillespie, P.C.  
50 South Last Chance Gulch  
P.O. Box 598  
Helena, MT 59601

Lee Le Veque  
410 Central Avenue, Ste. 309  
P.O. Box 909  
Great Falls, MT 59403-0909

Elizabeth Baker  
Hughes, Kellner, Sullivan & Alke  
40 West Lawrence, Ste. A  
P.O. Box 1166  
Helena, MT 59624-1166

Robert B. Pfennigs  
JARDINE, STEPHENSON, BLEWETT & WEAVER, P.C.  
P.O. Box 2269  
Great Falls, MT 59403-2269

DATED this 10 day of March, 2004.

  
UGRIN, ALEXANDER, ZADICK & HIGGINS, P.C.

E. LEE LeVEQUE  
410 Central Avenue, Suite 515  
P. O. Box 909  
Great Falls, MT 59403-0909  
Telephone: (406) 727-4131  
Facsimile: (406) 727-4171  
*Attorney for Defendant Triangle Health Care PLLP*

MONTANA TWELFTH JUDICIAL DISTRICT COURT, LIBERTY COUNTY

DORIS NELSON, Individually and as )  
Personal Representative of the Estate of )  
Emil J. (Jack) Nelson, )  
Plaintiff, )

CAUSE NO. DV-03-3237

vs. )

STATE OF MONTANA; LIBERTY )  
COUNTY, a political subdivision of the )  
State of Montana; LIBERTY COUNTY )  
HOSPITAL AND NURSING HOME, )  
INC., a Montana corporation; THOMAS )  
R. STEPHENSON, MD; RICHARD S. )  
BUKER, JR., MD; TRIANGLE )  
HEALTH CARE; TRIANGLE )  
HEALTH CARE PLLP; JOHN )  
DOES I-IV, )

RESPONSE TO PLAINTIFF'S  
FIRST DISCOVERY  
REQUESTS TO TRIANGLE  
HEALTH CARE, PLLP

Defendants. )

COMES NOW TRIANGLE HEALTH CARE, PLLP, and responds to  
plaintiff's First Discovery Requests as follows:

1           DISCOVERY REQUEST NO. 6001: Produce your complete file and all  
2 documents relating, directly or indirectly, to the application of Thomas R.  
3 Stephenson for employment by, or to practice medicine at, Triangle Health Care or  
4 Triangle Health Care, PLLP, in Chester, Montana.  
5

6           RESPONSE: With regard to Triangle Health Care PLLP, we are not  
7 presently aware of any such documents. Dr. Stephenson was not an employee of  
8 Triangle Health Care PLLP.  
9

10          DISCOVERY REQUEST NO. 6002: Produce your complete file and all  
11 documents relating, directly or indirectly, to the engagement of Thomas R.  
12 Stephenson to practice medicine in Chester, Montana.  
13

14          RESPONSE: With regard to Triangle Health Care, PLLP, we are not  
15 presently aware of any such documents. Dr. Stephenson was not an employee of  
16 Triangle Health Care, PLLP. In the event any such records might exist they would  
17 not be discoverable under applicable law, including, but not limited to, MCA Sec.  
18 37-2-201, et seq; MCA Sec. 50-16-201, et seq; and privacy laws.  
19

20          DISCOVERY REQUEST NO. 6003: Produce your complete file and all  
21 documents relating, directly or indirectly, to the efforts of you, or of persons  
22 working on your behalf, to credential, investigate or to otherwise determine the  
23 qualifications of Thomas R. Stephenson to practice medicine with or at Triangle  
24 Health Care, PLLP.  
25  
26  
27  
28

1                    RESPONSE: See response to Discovery Request No. 6002.

2                    DISCOVERY REQUEST NO. 6004: Produce your complete file and all  
3 documents relating, directly or indirectly, to the termination of the engagement of  
4 Thomas R. Stephenson, to practice medicine with or at Triangle Health Care,  
5 PLLP.  
6

7                    RESPONSE: Attached hereto is a copy of a letter from Thomas R.  
8 Stephenson, MD dated October 30, 1999, indicating his resignation effective  
9 January 1, 2000.  
10

11                   DISCOVERY REQUEST NO. 6005: Produce your complete file and all  
12 documents relating, directly or indirectly, to the dissolution of Triangle Health  
13 Care, PLLP, including, without limitation, all documents relating to the  
14 distribution of assets and liabilities.  
15

16                   RESPONSE: Attached hereto are copies of the following documents:

- 17                   A.     Application for Cancellation of Limited Liability Partnership  
18                               prepared December 15, 2000, and filed with the Secretary of State on  
19                               January 16, 2001;  
20  
21                   B.     Correspondence from the Secretary of State dated January 5,  
22                               2001.  
23  
24                   C.     As to the distribution of assets, all assets of Triangle Health Care,  
25                               PLLP, were transferred to Liberty County Hospital and Nursing  
26

1 practicing at the clinic in Chester, Montana, known as Triangle Health Care or  
2 Triangle Health Care, PLLP.

3 RESPONSE: None.

4 DISCOVERY REQUEST NO. 6028: Produce all documents submitted to  
5 the State of Montana by Triangle Health Care, PLLP (or by persons acting on their  
6 behalf, e.g., Richard S. Buker, Jr., or other members of the medical or  
7 administrative staff) relating, directly or indirectly, to any evaluation, assessment  
8 or review of Dr. Stephenson's performance.  
9

10 RESPONSE: With regard to Triangle Health Care, PLLP, on  
11 approximately two occasions a number of Dr. Stephenson's patient charts were  
12 provided to State officials with regard to the licensing process. These charts are  
13 not discoverable under applicable law, including, but not limited to, M.C.A. §37-2-  
14 201, et seq.; M.C.A. §50-16-201, et seq.; and privacy laws.  
15

16 DISCOVERY REQUEST NO. 6029: Produce for inspection and copying a  
17 true and correct copy of any insurance agreement (including Declaration Page)  
18 under which an insurance company or companies carrying on an insurance  
19 business may be liable to satisfy part or all of any judgment which may be entered  
20 in the above entitled action or to indemnify or reimburse for payments made to  
21 satisfy a judgment.  
22  
23  
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28

- 1 c. Sufficient information concerning the identity, nature of, and subject  
2 matter of the document so that the propriety of the claim of privilege  
3 may be presented for determination by the court;  
4  
5 d. The identify of each person who participated in its preparation and  
6 all persons to whom it was addressed, or to whom it was disclosed,  
7 including the identity of all persons provided with a copy of the  
8 document; and  
9  
10 e. The source of the document (e.g., personnel file), all attachments to  
11 the document, the number of pages comprising the document, and  
12 whether the document is handwritten or typewritten.

13 RESPONSE: Not applicable.

14 DATED this \_\_\_\_\_ day of March, 2004.

15  
16 TRIANGLE HEALTH CARE, PLLP

17 By \_\_\_\_\_  
18 Richard S. Buker, Jr., MD  
19 (Former Partner)

20 LEE/LEVEQUE LAW OFFICES, PLLC

21 By   
22 E. LEE LeVEQUE

23 410 Strain Bldg., Suite 515

24 P. O. Box 909

25 Great Falls, MT 59403-0909

26 Attorney for Defendant Triangle

27 Health Care PLLP

JAMES E. AIKEN  
ROBERT B. PFENNIGS  
Jardine, Stephenson, Blewett & Weaver, P.C.  
300 Central Avenue, Suite 700  
P. O. Box 2269  
Great Falls MT 59403-2269  
(406) 727-5000

Attorneys for Richard S. Buker, Jr., M.D. and  
Triangle Health Care

MONTANA TWELFTH JUDICIAL DISTRICT COURT, LIBERTY COUNTY

DORIS NELSON, Individually, and as Personal  
Representative of the Estate of Emil J. (Jack)  
Nelson,

Plaintiff,

-vs-

STATE OF MONTANA; LIBERTY COUNTY,  
a Political Subdivision of the State of Montana;  
LIBERTY COUNTY HOSPITAL AND  
NURSING HOME, INC., a Montana  
corporation; THOMAS R. STEPHENSON,  
M.D.; RICHARD S. BUKER, JR., M.D.;  
TRIANGLE HEALTH CARE; TRIANGLE  
HEALTH CARE, PLLP; JOHN DOES I-IV,

Defendants.

Cause No. DV-03-3237

RESPONSES TO PLAINTIFF'S  
FIRST DISCOVERY REQUESTS  
TO TRIANGLE HEALTHCARE  
(INCLUDING REQUESTS FOR  
ADMISSIONS)

The Defendant TRIANGLE HEALTHCARE, objects and responds to Plaintiff's  
First Discovery Requests To Triangle Healthcare (Including Requests For Admissions)  
dated January 9, 2004, as follows:

### GENERAL OBJECTION

Defendant objects to the instructions and definitions set forth and contained in Plaintiff's First Discovery Requests To Triangle Healthcare (Including Requests For Admissions) to the extent they seek to impose upon Defendant and its attorneys responsibilities and obligations pertaining to discovery and for compiling information exceeding the responsibilities and obligations imposed by the Montana Rules of Civil Procedure; to the extent they seek to cause Defendant to compile documents, information and data which Defendant is not required by the Montana Rules of Civil Procedure to compile for an adverse party; to the extent they seek to require Defendant to "identify" and provide "identification" in greater detail and to a greater degree than required by the Montana Rules of Civil Procedure; and to the extent they seek divulgence of privileged communications and work product of Defendant's attorneys.

DISCOVERY REQUEST NO. 3001: Produce your complete file and all documents relating, directly or indirectly, to the application of Thomas R. Stephenson for employment by, or to practice medicine at, Triangle Healthcare or Triangle Healthcare, PLLP, in Chester, Montana.

RESPONSE: Dr. Thomas R. Stephenson did not apply for employment with, nor did he apply to practice medicine with this Defendant. Regardless, the clinic was sold to Liberty County Hospital and Nursing Home, Inc. in August of 2000 and it did not maintain a separate file. Accordingly, even if such documents existed, this Defendant would not have copies.

DISCOVERY REQUEST NO. 5002: Produce your complete file and all documents relating, directly or indirectly, to the engagement of Thomas R. Stephenson to practice medicine in Chester, Montana.

RESPONSE: Defendant objects to this Interrogatory on the ground the term "engagement" is vague and ambiguous. Without waiving its objection and to the extent the term is understood, the only record which Defendant has or is aware of regarding the "engagement" of Dr. Thomas R. Stephenson to practice medicine in Chester is a contract dated November 1, 1997, that Dr. Stephenson apparently entered into with Liberty County Hospital and Nursing Home. A copy is attached as Exhibit I.

DISCOVERY REQUEST NO. 5003: Produce your complete file and all documents relating, directly or indirectly, to the efforts of you, or of persons working on your behalf, to credential, investigate or to otherwise determine the qualifications of Thomas R. Stephenson to practice medicine with you or Triangle Healthcare, PLLP.

RESPONSE: Defendant objects to this request on the ground the information requested is privileged and protected from disclosure pursuant to the provisions of MCA §§ 50-16-203, 50-16-205 and 37-2-201. Defendant also objects to disclosure based on privacy considerations of the person or persons identified in any such documents. Without waiving its objections, the clinic was sold to Liberty County Hospital and Nursing Home, Inc. in August of 2000 and it did not maintain a separate file. Accordingly, this Defendant has no such records.

RESPONSE: Defendant objects to this request on the ground the information sought is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence.

DISCOVERY REQUEST NO. 5013: Admit that you did not make inquiry of, 4013  
or request information from, the Federation of State Medical Boards for information regarding Dr. Stephenson.

RESPONSE: Defendant objects to this request on the ground the information sought is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence.

DISCOVERY REQUEST NO. 5014: Admit that you did not make inquiry of, 4014  
or request for information from, any person, governmental agency or other entity outside of the State of Montana relating to the practice of medicine by Dr. Stephenson in California.

RESPONSE: Defendant objects to this request on the ground the information sought is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence.

DISCOVERY REQUEST NO. 5015: Identify all persons named as references, 4015  
by Stephenson in his application to practice medicine at Chester, Montana.

RESPONSE: Defendant objects to this request on the ground the information sought is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request on the ground the information requested is privileged and protected from disclosure pursuant to the

provisions of MCA §§ 50-16-203, 50-16-205 and 37-2-201. Defendant also objects to disclosure based on privacy considerations of the person or persons identified in any such documents.

DISCOVERY REQUEST NO. 5016: Admit that you did not make inquiry of, 4017 or request information from, any reference identified by Stephenson.

RESPONSE: Defendant objects to this request on the ground the information sought is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request on the ground the information requested is privileged and protected from disclosure pursuant to the provisions of MCA §§ 50-16-203, 50-16-205 and 37-2-201. Defendant also objects to disclosure based on privacy considerations of the person or persons identified in any such documents.

DISCOVERY REQUEST NO. 5017: If your response to Discovery Request 4018 5010 through 5014, and Discovery Request 5016, or to any of them is a denial, or is anything other than an unqualified admission:

- a. Identify each person, department or agency to whom inquiry or requests for information was made;
- b. State the date or dates of each inquiry or request;
- c. State whether the inquiry or request was written or oral;
- d. Identify the person making the inquiry or request; and
- e. Produce all documents evidencing such inquiry or request and all responses to any inquiry or request.

DISCOVERY REQUEST NO. 5030: Identify each person who was an owner of Triangle Healthcare immediately prior to the formation and commencement of business of Triangle Healthcare, PLLP.

RESPONSE: The two partners in Triangle Healthcare prior to formatting of Triangle Healthcare PLLP were Dr. Richard S. Buker, Sr., and Dr. Forrest Lanchbury.

DISCOVERY REQUEST NO. 5031: If Triangle Healthcare remains in existence, identify each person who is presently an owner of Triangle Healthcare and state that the date each acquired his or her ownership interest.

RESPONSE: The clinic was sold to Liberty County Hospital and Nursing Home, Inc. in August of 2000.

DISCOVERY REQUEST NO. 5032: State the date Triangle Healthcare was formed; the date, if different, that it first conducted business; and the identity of the person or persons who formed Triangle Healthcare.

RESPONSE: The clinic was sold to Liberty County Hospital and Nursing Home, Inc. in August of 2000 and it did not maintain a separate file. Without a file, Defendant is not able to provide this information.

DISCOVERY REQUEST NO. 5033: Produce true and correct copies of performance reviews or evaluations of Thomas R. Stephenson while he was practicing at the clinic in Chester, Montana, known as Triangle Healthcare or Triangle Healthcare, PLLP.

RESPONSE: Defendant objects to this request on the ground the information sought is irrelevant and is not reasonably calculated to lead to the discovery

of admissible evidence. Defendant further objects to this request on the ground the information requested is privileged and protected from disclosure pursuant to the provisions of MCA §§ 50-16-203, 50-16-205 and 37-2-201. Defendant also objects to disclosure based on privacy considerations of the person or persons identified in any such documents.

DISCOVERY REQUEST NO. 5034: Produce all documents submitted to the State of Montana by you or by Triangle Healthcare, PLLP (or by persons acting on their behalf, e.g. Richard S. Buker, Jr., or other members of the medical or administrative staff) relating, directly or indirectly, to any evaluation, assessment or review of Dr. Stephenson's performance.

RESPONSE: Defendant objects to this request on the ground the information sought is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this request on the ground the information requested is privileged and protected from disclosure pursuant to the provisions of MCA §§ 50-16-203, 50-16-205 and 37-2-201. Defendant also objects to disclosure based on privacy considerations of the person or persons identified in any such documents.

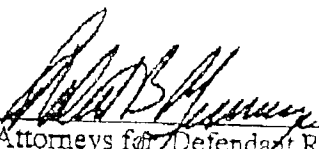
DISCOVERY REQUEST NO. 5035: Produce for inspection and copying a true and correct copy of any insurance agreement (including Declaration page) under which an insurance company or companies carrying on an insurance business may be liable to satisfy part or all of any judgment which may be entered in the above entitled action or to indemnify or reimburse for payments made to satisfy a judgment.

RESPONSE: For the reasons set forth herein, Defendant believes that many of the documents requested by Plaintiff are protected from disclosure on the basis of both privilege and privacy. However, this Defendant is not the possession of any such documents.

DATED this 10<sup>th</sup> day of March, 2004.

JARDINE, STEPHENSON, BLEWETT & WEAVER, P.C.

By:

  
Attorneys for Defendant Richard S. Buker, Jr., M.D. and  
Triangle Health Care

VERIFICATION

STATE OF MONTANA     )  
                                  : ss.  
County of Liberty     )

RICHARD A. BUCHER, Jr., being first duly sworn, on oath deposes and says:

That he/she is one of the Defendants in the above-entitled action; that he/she has read the foregoing *Responses to Plaintiff's First Discovery Requests To Triangle Healthcare (Including Requests for Admissions)*, and knows the contents thereof, and that the matters and things contained therein are true to the best of his knowledge, information and belief.

*Richard A. Bucher, Jr.*

SUBSCRIBED AND SWORN TO before me this 10<sup>th</sup> day of March, 2004.



*Marsha A. Stokes*  
Notary Public for the State of Montana  
Printed name: Marsha A. Stokes  
Residing at: Charleston, MT  
My Commission Expires: 5/23/2006